SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 97-454 Decided April 28, 2000

Appeal from a Decision Record and Finding of No Significant Impact by the Moab District Manager, Bureau of Land Management, approving expansion and commercial use of an airstrip on public land and granting rights-of-way to two commercial air services. UT-068-95-055.

Affirmed.

1. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land-Use Planning--National Environmental Policy Act of 1969: Environmental Statements

   A BLM decision to approve expansion and commercial use of airstrip on public land, to include rights-of-way to commercial providers, will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

2. Administrative Procedure: Administrative Review--Federal Land Policy and Management Act of 1976: Airstrips--Federal Land Policy and Management Act of 1976: Land-Use Planning

   A BLM decision to allow limited and reasonable commercial aircraft use of an airstrip on public land will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to authorize the expansion and use include the availability of other alternatives and the reasonableness of the authorized use.

3. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

APPEARANCES: Scott Groene, Esq., Moab, Utah, and Kevin Walker, Moab, Utah, for the Southern Utah Wilderness Alliance; A. Scott Loveless, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Southern Utah Wilderness Alliance (SUWA or Appellant) has appealed and filed a Petition for Stay 1/ of the May 20, 1997, Finding of No

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1/ A Petition for Stay was filed by Appellant with its Statement of Reasons (SOR). This matter was not addressed at that time as a result of a misunderstanding by counsel for BLM and mistaken advisement to the Board that the ROW's had not yet been issued, that the appeal was premature, and that BLM had not yet concluded section 7 consultations with U.S. Fish and Wildlife Service (FWS). When the ROW's were issued on Dec. 3, 1998, counsel for Respondent, according to BLM's filings, was not immediately advised. In Respondent's Second Supplemental Response to the Board's Order to Show Cause filed with the Board on Jan. 18, 2000, counsel for BLM explained the misunderstanding as follows:

"First of all, Appellant's appeal was indeed timely filed, and was in no way premature. The decision to issue the right-of-way for the Mineral Bottom airstrip was issued on May 20, 1997, (see Record). BLM's practice in such matters is to send the unsigned right-of-way grant to the applicant for signature and to provide bonding, where required, as it was here. The grant is not effective until it is then returned to the BLM and signed by the authorized officer. In the present matter, this final step occurred on Dec. 3, 1998, as reflected in the documents submitted in Appellant's response to Board's Order to Show Cause, since no stay had issued in this appeal. All of this time, counsel was under the impression that nothing was moving until the biological opinion was received, unaware that a biological opinion had already issued on November 25, 1996, concurring in BLM's assessment that the proposed activity at the airport 'was not likely to adversely affect' the peregrine falcon * * *."

In light of our determination in this case, the Petition for Stay is rendered moot. We nevertheless caution BLM to more carefully coordinate with counsel to ensure the Board is correctly advised as to the date that decisions have been implemented.

Significant Impact/Decision Record (FONSI/DR) issued by the District Manager, Moab District, Bureau of Land Management (BLM or Respondent) approving expansion and commercial use of the Mineral Bottom Airstrip. The decision also approved issuance of rights-of-way (ROW's) for commercial use of the airstrip to Redtail Aviation (UTU-70156) and to Mountain Flying Service (UTU-70438). The DR and FONSI were based on Environmental Assessment (EA) UT-068-95-055.

The EA stated that the proposed action was for BLM "to authorize commercial use of the Mineral Bottom Airstrip and issue rights-of-way to commercial companies wishing to improve, use and maintain the existing strip." (EA at 3.) It identified the actions that would be authorized to improve the strip, including construction of a run-up pad, clearing the area of weeds, and developing a light road. The EA explained that the airstrip was needed to provide a shuttle service for people rafting through Cataract Canyon and that this service would allow people to drive to the river take-out and fly to the put-in on the Green River at Mineral Bottom. Id.

In its SOR and Petition for Stay, SUWA asserts that BLM failed to consider the reasonably foreseeable environmental consequences of its action and a reasonable range of alternatives, in violation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 (1994). SUWA contends that BLM failed to consider the effects of the approved action by considering only recent historical levels and types of aircraft use in its analysis, although it has approved unlimited use of the airstrip in its decision. (SOR at 1.) Appellant also claims that BLM failed to analyze noise impacts. It further challenges BLM's analysis of impacts to peregrine falcons and bighorn sheep. Id.

In its Answer, BLM states that use of the Mineral Bottom Airstrip in conjunction with river rafting trips has been ongoing for more than a decade without land use authorization from BLM. (Answer at 2.) It explains that in an effort to provide reasonable regulation, administration, and monitoring of the site's use, BLM now proposes to issue ROW's for the airstrip and for access to it. Id. BLM states that these grants of ROW contain numerous safeguards and opportunities for evaluation and modification after monitoring, including possible termination or nonrenewal. Id.

In response to Appellant's two main arguments--that BLM failed to consider either the reasonably foreseeable environmental consequences or a reasonable range of alternatives to the proposed action--Respondent urges that Appellant's claims hinge on no more than a fundamental disagreement with BLM over what should be considered "reasonable." (Answer at 4.) First, with reference to Appellant's claim that the decision violated NEPA by approving unlimited use after analyzing only recent historical levels of use, BLM explains that a ceiling on the number of people (8,000 annually) permitted to raft in Cataract Canyon has kept visitor use fairly level over the past 10 years. (Answer at 5, citing EA at 1.) Respondent states that practically as well as historically speaking, the use of the airstrip by persons not intending to float through Cataract Canyon has been and will be

negligible, and "attempting to quantify much less analyze such use would be an exercise in speculation." Id. at 6. BLM urges that even if such an unlikely use were to develop, the ROW grants contain provisions for periodic review, modification, and even termination. Id.

In response to Appellant's claim that the EA is deficient because it does not analyze noise impacts, BLM states that Appellant is simply wrong. Id. Citing the EA at 2, Respondent notes that the assessment discusses airstrip authorization in relation to other local plans, such as the planning documents of nearby Canyonlands National Park. Id. One of those planning documents, the Park's 1995 Backcountry Management Plan, addresses noise associated with low flying aircraft. Id. Equally important, BLM states, there are several routes to the Mineral Bottom Airstrip that do not involve flying over noise sensitive areas. Id. at 7. BLM urges that the EA did not overlook the effects of noise, it simply and correctly observed that the use of the airstrip would not necessitate low-level flights over the nearby National Park, reasonably assuming that users of the airstrip will comply with all applicable rules and regulations of local and Federal authorities. Id. Further, in response to Appellant's argument that BLM erred in not prohibiting helicopter flights into the airstrip, Respondent explains that any prohibition against use of the airstrip by helicopters would be meaningless, since under the law, most helicopters can land anywhere, and in any event, the Federal Aviation Administration has sole responsibility for aircraft regulation, other than with respect to the issuance of ROW's. Id. at 8. BLM argues, therefore, that BLM's discussion of noise impacts within the EA "is entirely appropriate for the purposes of the EA, and BLM cannot be faulted for not imposing meaningless restrictions." Id. at 9.

In its Answer, BLM observes that the Supreme Court has ruled that an environmental analysis must only have a "reasonably complete discussion of possible mitigation measures" and that the decision does not have to incorporate any of the mitigation measures discussed. (Answer at 9, quoting from Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 353 (1989).) Specifically with respect to Appellant's charges of inadequate mitigation of possible harm to wildlife (i.e., the peregrine falcon and bighorn sheep), BLM states that it has properly tied its evaluation of impacts to its section 7 consultation with the FWS. Id. Addressing the peregrine falcon, BLM notes that the EA states that FWS concurred with its conclusion that the proposed action may affect, "but is not likely to adversely affect," peregrine falcons. Id., citing EA at 8, 12. Equally important, the EA goes on to state that while the consultation has been concluded, it will be reopened if "new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action." Id., quoting EA at 12. In addition, the ROW grants include a specific provision, section 2.d, which provides that the grants may be terminated if, in consultation with FWS, it is determined that continued use of the airstrip will adversely affect the peregrine falcon. Id. at 9-10. Similarly, BLM argues, the improving situation with bighorn sheep and their environmental sensitivities are addressed at reasonable length at pages 6 and 8 of the EA. Id. at 10.

In response to Appellant's claim that BLM did not consider a reasonable range of alternatives in its proposed decision, Respondent states that "[t]he clearly most reasonable alternatives were to open the existing airstrip, possibly with or without various types of use or seasonal restrictions, or the 'no action alternative,' i.e., not reopening the airstrip at all." Id. at 12. BLM states that these alternatives were discussed and discussed adequately. Appellant had also argued that BLM's consideration of the location of an airstrip on the canyon rim is inadequate and Respondent's reasons for rejecting the rim site as an alternative are also inadequate. In response, BLM makes the point that the discussion of an alternate site

> was entirely unnecessary, that it appears to have been discussed only as an attempt to satisfy a potential challenge that an insufficient number of alternatives were considered (such as Appellant provides), and that the two clear "reasonable" alternatives were discussed and discussed adequately. Any alternatives beyond these will inherently be "impractical or ineffective" or less environmentally sensitive, rendering their discussion unnecessary under the very caselaw Appellant cites, e.g. All Indian Pueblo Council v. U.S., 975 F.2d 1437 (10th Cir. 1992).

Id.

[1] A BLM decision to approve expansion and commercial use of an existing airstrip on public land will be affirmed on appeal if the decision is based on consideration of all relevant factors and is supported by the record which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A challenge to that determination must show that it was premised on an error of law or fact, or that the environmental analysis failed to consider a substantial environmental issue of material significance to the proposed action. See, e.g., Owen Severance, 141 IBLA 48, 51 (1997); Southern Utah Wilderness Alliance, 128 IBLA 382, 390 (1994); Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992), and cases cited therein. Differences of opinion, unsupported by any real objective proof, are insufficient to overcome a BLM decision for which there is abundant support in the record. Id.

We turn first to SUWA's contentions concerning the alleged failure on the part of BLM to ensure protection for peregrine falcons 2/ and bighorn

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2/ When Appellant filed this appeal, the peregrine falcon was listed as endangered. On Aug. 25, 1999, the FWS officially removed the peregrine falcon from its list of threatened and endangered species. See 64 Fed. Reg. 46542 (Aug. 25, 1999). As noted by Appellant in its Supplemental Response to BLM's Renewed Motion to Dismiss (Motion) filed Mar. 6, 2000, however, FWS monitors species for 5 years following delisting. (Motion at 2.)

sheep from the impacts of aircraft flight into and from the Mineral Bottom Airstrip. Appellants argue that the EA does not meet the requirements of NEPA, in that it does not adequately consider all feasible alternatives, it does not consider all potential adverse impacts to the area, and the mitigation measures contained therein are insufficient to reduce potential environmental impacts to insignificance.

We find no basis in the record which convinces us that BLM did not take a hard look at impacts on the Green River corridor and identify relevant areas of environmental concern with respect to the animal habitats affected by the ROW grants. With regard to Appellant's concerns related to the wildlife habitat, on November 25, 1996, the FWS, having reviewed BLM's Biological Assessment (BA) for the Mineral Bottom Airstrip, issued a Biological Opinion (BO) addressed to the impact of commercial use of the Mineral Bottom Airstrip as it relates to the peregrine falcon. In its opinion, FWS concurred with BLM's determination that authorizing commercial use of the airstrip "may affect, but [is] not likely to adversely affect" the peregrine falcon. (BO at 1.) The FWS BO further states:

> Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, this concludes section 7 consultation.

Id. The BLM BA, reviewed and approved by the November 25, 1996, FWS BO, included the following mitigation measures directed at the peregrine falcon:

> There will be a stipulation on permits that pilots select approach paths that minimize low elevation flights over known peregrine nesting territories and that they implement noise reduction measures during takeoff and landings.
>
> Continue coordinated (Utah Division of Wildlife Resources, USFS and BLM) monitoring efforts of documented peregrine nesting territories and determine if any activities are having adverse impacts.

(BA at 4-5.)

Subsequently, in a follow-on BO prepared by FWS and issued April 22, 1998 (1998 BO), for the use, improvement, and maintenance of the Mineral Bottom Airstrip, FWS concluded:

> After reviewing the current status of [the] American peregrine falcon, the environmental baseline for the action area, and the direct, indirect, and cumulative effects of the proposed action, it is the Service's biological opinion that the action as proposed is not likely to jeopardize the continued existence of American peregrine falcons in Utah. No critical habitat has been designated for this species; therefore none will be affected.

(1998 BO at 8.) In the 1998 BO, FWS provided the following measures to further minimize and monitor the possible take of peregrine falcons:

> 1. The eyrie will be monitored for success, failure, and suspected impacts from improvement, maintenance, and use of the Mineral Bottom Airstrip.
>
> 2. Disturbance from construction, operation, and maintenance will be minimized during the entire nesting stage.

(1998 BO at 11.) The terms and conditions implementing these measures within the 1998 BO, as amended by FWS on June 3, 1998, require that (1) monitoring is to be conducted at the site for three breeding seasons (1998, 1999, and 2000); (2) a number of behaviors listed in the June 3, 1998, amendment are to be recorded when observed; (3) a report of weekly airstrip improvement/construction activities will be prepared to allow the FWS and BLM to correlate disturbances with specific construction, operation, or maintenance activities; (4) any required blasting is to be delayed until after the nesting and fledging season is completed; and (5) all project employees shall be informed, through an educational program, of the occurrence of peregrine falcons and their status. (1998 BO at 10-12; June 3, 1998, Amendment at 1.)

BLM points out that identification of endangered species is the province of FWS and that the presence of the peregrine falcon eyrie was documented under applicable FWS regulations and guidance. BLM contends, therefore, that its action of limiting use during certain months and complying with FWS requirements constitutes adequate mitigation. Moreover, SUWA presents no evidence to contradict the FWS determination in its 1996 BO that the peregrine falcon is not likely to be adversely impacted by use of the airstrip pursuant to the ROW's.

Section 7(a)(2) of the Endangered Species Act (ESA), as amended, 16 U.S.C. § 1536(a)(2) (1994), provides in pertinent part:

> Each Federal agency shall * * * insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

The Office of Hearings and Appeals does not have authority to review the merits of BO's issued by FWS under section 7 of the ESA. Southern Utah Wilderness Alliance, 128 IBLA 52, 60-61 (1993); Lundgren v. Bureau of Land Management, 126 IBLA 238, 248 (1993); Edward R. Woodside, 125 IBLA 317, 322-24 (1993).

Though the Board has no jurisdiction to set aside or "second-guess" FWS' BO determinations, we may review a party's objections as they relate to compliance or consistency with policy determinations. BLM's policy, as expressed in the EA, fully tracks the 1996 FWS opinion as to what is required to forestall adverse impacts to the peregrine falcon. The precautions recommended, in the 1996 and 1998 BO's, clearly do not "prohibit" activity in the vicinity of the ROW's. The ROW holders, no less than Federal agencies, are charged with preventing harm to endangered species. 3/

We similarly find that BLM's consideration and provision for the possible presence of bighorn sheep in the Mineral Bottom area within the EA is satisfactory. See EA at 6, 8; DR at 1. The DR reflects that Utah officials recommended to BLM during the review process that a water catchment be installed in the Mineral/Hell Roaring Canyons area to offset any displacement of bighorn sheep from the Mineral Bottom Airstrip area during lambing season and periods of reduced water availability. The DR reflects that this recommended mitigation has not been found to be necessary and thus was not included in one of the stipulations in the ROW's since water sources are currently available, and there is no indication that water will be unavailable in the future. Id. Nevertheless, the DR provides that the bighorn will be monitored to determine if aircraft use causes them to leave current water sources and if additional water sources are required. Id.

Our review of the record convinces us that there were no BLM omissions regarding possible environmental impacts upon the peregrine falcon or bighorn sheep, and that the EA and BO together represent a careful review of the environmental problems and relevant areas of environmental concern.

We next turn to Appellant's contention that BLM failed to consider adequate alternatives in approving the grant of the two ROW's. Council on Environmental Quality regulations provide that Federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Agencies shall "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a). A "rule of reason" approach applies to both the range of alternatives and the extent to which

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3/ Under section 9 of the ESA, 16 U.S.C. § 1538(1)(B) (1994), "it is unlawful for any person * * * to take any [endangered] species within the United States or the territorial sea of the United States." "Take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19) (1994). While this section is no longer technically applicable to the peregrine falcon in light of its delisting, it was applicable at the time the decision issued and must be considered in reviewing the adequacy of the BLM decisional process.

each alternative must be addressed. See Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972); Allen D. Miller, 132 IBLA 270, 274 (1995). Thus, the fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous. This Board must give considerable deference to the ultimate policy selections of the resource managers. See In re Bryant Eagle Timber Sale, 133 IBLA 25, 29 (1995); Oregon Natural Desert Association, 125 IBLA 52, 60 (1993).

We conclude that BLM has complied with the above guidelines. Responding to SUWA's NEPA arguments, we observe first that BLM did consider alternatives other than the adopted action, and that those alternatives are discussed at pages 5, 6, and 10 of the EA and in the FONSI/DR. Thus, an alternative location for the airstrip was considered above the Mineral Bottom switchbacks near the Mineral Canyon Road. Use of this alternative airstrip would require a shuttle service to take passengers down the switchbacks to the Mineral Bottom boat ramp. (EA at 5.) Although the section of road through the switchbacks is less than two miles long, the road is steep and narrow with poor sight distance in several locations. Id. Traffic through the switchbacks from April through September is already estimated at 4,900 vehicles and 1,700 bicycles, respectively, and BLM determined that an increase in traffic on this road during the recreation season would create an unnecessary safety hazard to bicyclists and motorists. Id. For these reasons, this alternative was rejected.

Under the "no-action" alternative, a ROW would not be granted for an airstrip on public lands to provide airplane access to Mineral Bottom. The present airstrip would be closed, scarified, and re-seeded. Id. The impacts of selecting the no-action alternative include denial of the option of using an air shuttle service from Hite to Mineral Bottom. Id. at 10. Commercial enterprises offering river rafting and canoeing with the air shuttle as part of their package would be adversely affected by the need to provide a surface transportation alternative. Id. Air transport enterprises would be precluded from making the profits derived from 60-80 flights into Mineral Bottom per season. Id. Boaters under this alternative, if they used private vehicles, would increase the activity on the Mineral Bottom switchbacks by 60-80 vehicles a year, an increase of approximately 2 percent. Id. Use of the airstrip by private and recreational pilots, who have been using the strip for over 30 years, would be eliminated. Id. Use of aircraft for search and rescue operations on the Green River would also be eliminated. Id. However, recreationists in the nearby national park would experience no sounds from shuttle aircraft if this alternative was selected. Id.

Our review of the "no action" alternative indicates that selecting it would have resulted in access to the Green River put-in at Mineral Bottom by motorized, nonaviation transit only. Further, we find that BLM considered the requirements of multiple use of public lands in determining that the "no-action" alternative was not feasible if that concept had viability. Our review of the record likewise indicates that selecting an alternative location would have provided an impractical, noncost effective, unsatisfactory solution to the recreational requirement identified for the

put-in at Mineral Bottom. As noted earlier, BLM's task in selecting an appropriate alternative is to ensure that the environmental impacts are kept to a minimum and mitigated as reasonably as possible, while attempting to meet its multiple-use commitment. Our review of the DR/FONSI persuades us that BLM properly performed this task.

[2] BLM's decision to allow reasonable commercial aircraft use of the Mineral Bottom Airstrip is consistent with uses that may be authorized on public land and will be upheld on appeal where there has been no showing of compelling reasons for modification or reversal. In determining whether to approve the commercial use of the Mineral Bottom Airstrip, BLM properly considered relevant factors such as the availability of other alternatives and the reasonableness of the authorized use. Southern Utah Wilderness Alliance, 140 IBLA 341, 348-49 (1997).

[3] When BLM has taken a hard look at all of the likely environmental impacts of a proposed action, it will be deemed to have complied with NEPA, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial review). See Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227 ! 28 (1980); Great Basin Mine Watch, 148 IBLA 1, 3 (1999). NEPA does not direct BLM to take any particular action, or refrain from taking an action which will result in environmental degradation. It merely mandates that whatever action BLM takes be initiated only upon a full consideration of all environmental impacts. Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990). We conclude from our review of the EA and DR/FONSI that the decision to approve the airstrip use and expansion and the issuance of the two ROW's was based on a reasonably thorough consideration of all relevant factors and comports with NEPA, and other applicable authorities. Specifically, we find that the decision to allow the proposed action does not result in any undue or unnecessary environmental degradation and that the EA and DR adequately address the three primary issues regarding the authorization of the Mineral Bottom Airstrip. These are protection of nesting peregrine falcons and lambing bighorn sheep, keeping an existing airstrip open for commercial and private use, and establishment of flight elevation and flight paths to minimize impacts to sensitive species and recreationists. See DR at 1.

Moreover, in the case now before us, BLM's management initiative, as expressed in the EA, is not a newly independent action, but is premised on use of the airstrip that had been ongoing for many years. The effort to ensure regulated use through ROW grants for commercial use with appropriate stipulations to ensure adequate environmental protections does precisely what Appellant claims is necessary in its SOR. Accordingly, after review of SUWA's arguments in the context of BLM's environmental evaluation, we find that Appellant's concerns are without merit.

In order to successfully challenge BLM's decision and finding of no significant impact based on the EA, Appellant must demonstrate that the decision was premised on a clear error of law, a demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was

prepared; mere differences of opinion are insufficient to cause a reversal of BLM's action if it is reasonable and supported by the record on appeal. See Committee for Idaho's High Desert, 139 IBLA 251, 256-57 (1997), and cases cited. We conclude that Appellant has failed to satisfy its burden of proof and that BLM's decision was reasonable and supported by the record.

To the extent not expressly addressed in this decision, other arguments advanced by the parties have been considered and are rejected. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, 88 IBLA 133, 156 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge